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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.
f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

December 20, 2011
9:48 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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Motion for Reconsideration/Rehearing of Offer Filed by Jake W.
Rodd

Motion for Enforcement of Offer Order

244th Omnibus Objection to Claims and Motion Requesting
Enforcement of Bar Date Orders (Late-Filed Claims)

257th Omnibus Objection to Claims (Duplicate Claims)

258th Omnibus Objection to Claims (Insufficient Documentation)

259th Omnibus Objection to Claims and Motion Requesting
Enforcement of Bar Date Orders (Late-Filed Claims)

260th Omnibus Objection to Claims and Motion Requesting
Enforcement of Bar Date Orders (Late Filed Claims Post-
Effective Date)

261st Omnibus Objection to Claims (No Liability Claims)

262nd Omnibus Objection to Claims (Pension Benefits Claims of
Former Salaried and Hourly Employees)

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263rd Omnibus Objection to Claims (Welfare Benefits Claims of
Retired and Former Salaried and Executive Employees)

Transcribed by: Lisa Bar-Leib

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A P P E A R A N C E S :

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BY: STEFANIE BIRBROWER GREER, ESQ.

ALSO APPEARING:

JAKE RODD, PRO SE CLAIMANT

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Jacksonville, FL 32206

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P R O C E E D I N G S

THE COURT: Good morning. Have seats, please. Okay.
GM. As far as I know, the only contested disputed matter we
have is the Jake Rodd matter. But I gather we have quite a
number of other things. Mr. Smolinsky, do you have a
recommendation as to how to proceed?

MR. SMOLINSKY: Your Honor, besides Mr. Rodd's motion
-- Joe Smolinsky, Weil Gotshal & Manges, for Motors Liquidation
Company GUC Trust. Other than Mr. Rodd's motion, we only have
omnibus claims objections which are going forward in the usual
fashion with no contested hearings. So we don't care whether
you want to handle those first so Ms. Greer could get on her
way and then we can handle Mr. Rodd.

THE COURT: I'm sorry. I couldn't hear that over the
noise.

MR. SMOLINSKY: Ms. Greer has several of the matters.
So if we handle those first perhaps she can move on to other
things.

THE COURT: Okay. Ms. Greer?

MS. GREER: Good morning, Your Honor. Stephanie Greer
from Dickstein Shapiro on behalf of the --

MR. RODD (TELEPHONICALLY): Hello.

MS. GREER: Hello.

THE COURT: Just a minute, please, Mr. Rodd. We'll
get to you in just a moment.

1 MS. GREER: Is that better?

2 THE COURT: A little bit. Let's see if he -- there's
3 quite a bit of difference when you get very close.

4 MS. GREER: Okay. All right. Better?

5 THE COURT: Now it is.

6 MS. GREER: Okay. Stephanie Greer from Dickstein
7 Shapiro on behalf of the Motors Liquidation Company GUC trust.
8 Your Honor, today we have five omnibus objections to claims.
9 In the usual fashion, we're going forward with the uncontested
10 objections. We have the 257th omnibus objection which is an
11 objection based on duplicative claims. One of those has been
12 adjourned and fourteen of them are going forward today. We
13 have the 258th omnibus objection which is based on insufficient
14 documentation. Three of those have been adjourned; thirty-
15 three of those are going forward. We've withdrawn our
16 objection as to one of those. With respect to the 259th
17 objection on late-filed claims, one of those has been
18 adjourned; two are going forward. The 260th omnibus objection,
19 also on late-filed, these are claims that were filed after the
20 effective date. All of those are going forward, Your Honor.
21 And then, finally, we have the 261st omnibus objection which
22 are --

23 THE COURT: Pause, please, Ms. Greer. Mr. Rodd, I
24 think you may be the only one on the phone but noise is coming
25 through into the courtroom over the phone. Would you try to

1 stay as quiet as you can, please? Go ahead, Ms. Greer.

2 MS. GREER: Sure. We have the 261st omnibus objection
3 before the Court. Those are no-liability claims. One is
4 adjourned and forty-five are going forward.

5 We also have three adjourned omnibus objections which
6 were situations where the claimant had reached out to us,
7 expressed some response to the initial objection but having
8 talked to them, they decided not to pursue an objection. So
9 we're going forward with those today on an uncontested basis.
10 All of these are from the 244th omnibus objection which are
11 late-filed claims. The three that are going forward today are
12 Linda Fisher, Jacob Hall and Christeen Saulters Hinton. And
13 we'll make sure that when we submit an order, it has all the
14 claim numbers and it's clear that these are adjourned from the
15 244th objection.

16 THE COURT: Okay. Well, then everything you said is
17 fine. So just take care of the paperwork and get it to my
18 chambers at your convenience.

19 MS. GREER: Okay. Thank you, Your Honor.

20 THE COURT: Thank you. Have a good day.

21 MS. GREER: May I be excused?

22 THE COURT: I beg your pardon?

23 MS. GREER: May I be excused?

24 THE COURT: Yes, you may.

25 MS. GREER: Okay.

1 THE COURT: Yes. Thank you. Okay. Are we now up to
2 Mr. Rodd's claim or his motion?

3 MR. SMOLINSKY: Yes, sir. And then we can handle two
4 more omnibus motions after that.

5 THE COURT: Okay. Mr. Rodd, you're on the phone?

6 MR. RODD: Yes, sir.

7 THE COURT: Okay. Mr. Rodd, did you have a chance to
8 read GM's objection to your claim? Basically, what they're --

9 MR. RODD: Yes. I --

10 THE COURT: What they're saying is that you don't have
11 any claim at all but they're willing to give you 5,000 bucks to
12 settle the matter. And putting aside whether or not they're
13 bound to continue to keep the offer on the table, they're still
14 willing to give you 5,000 bucks. Do you really want me to
15 decide whether your claim is barred by the statute of
16 limitations and you get zero?

17 MR. RODD: Yes, sir. I do.

18 THE COURT: Why is that?

19 MR. RODD: Because, sir, in looking at the U.S.C.
20 code, right, I found that there was some mitigating
21 circumstances to my case. For instance, Mr. Smolinsky failed
22 to tell you that in the process, I filed my initial claim with
23 GM through my attorney at the time, a Mr. Dexter van Davis
24 (ph.). And during that course of time, Your Honor, I never
25 received a letter of rejection. In fact, I received a letter

1 from Ms. Cudsworth of their ESIS firm, January 3rd, 2008. And
2 in that letter, she was saying that I wished to continue my
3 claim. Well, Your Honor, if I had a claim in process with the
4 insurance company and I was awaiting an answer then there would
5 be no need for me to file a litigation. I was given the
6 impression that my claim was given process with ESIS as per
7 this letter which is contained in your records. And the fact
8 of the matter is, sir, that Mr. Smolinsky said to me that an
9 insurance claim is different than a legal action. Well, if I
10 was in the middle of an insurance claim, there would have been
11 no need for me to file a legal action constituting that I never
12 received a letter of rejection from ESIS and nor have I
13 received a letter of rejection from Mr. Smolinsky. And in --
14 through their review of the situation, there should be no
15 information to substantiate that.

16 So I'm thinking that as for the U.S.C. code proof of
17 claim that my claim would still be valid because a court action
18 was done on February the 23rd, 2010 and signed off by yourself
19 as further agreement with Mr. Smolinsky and myself. And in
20 reading the Code, my interpretation was that any time that a
21 legal action was done thirty days after the legal action has
22 taken place that it becomes a matter of record that the claim
23 would be accepted.

24 THE COURT: All right.

25 MR. RODD: I mean, I could be misinterpreting the Code

1 but that's why I requested that it -- would know you review it.

2 THE COURT: Well, I think you might be misinterpreting
3 the law. And I'm going to allow Mr. Smolinsky and invite Mr.
4 Smolinsky to respond. And then I'm going to explain the law
5 and I'm going to give you one last chance to get the 5,000
6 dollars before you almost certainly -- I'll take out the
7 "almost" -- before you certainly will get nothing.

8 Mr. Smolinsky --

9 MR. RODD: Okay. Then I'll do this, Your Honor.

10 THE COURT: -- go ahead and make your response,
11 please.

12 MR. SMOLINSKY: Thank you, Your Honor. And just to
13 clarify, the settlement was for a general unsecured claim in
14 the amount of 5,000 dollars not 5,000 dollars in cash.

15 THE COURT: Right.

16 MR. SMOLINSKY: Your Honor, one of the most difficult
17 aspects of the wind-down of these estates is the large number
18 of pro se individual claimants. And we've been very sensitive
19 to that issue. We spent an inordinate amount of time
20 explaining legal principles which are oftentimes difficult to
21 comprehend for individuals who are not trained in the law.
22 And, of course, at every turn, we advised claimants to seek
23 legal counsel.

24 Mr. Rodd has been in discussions with our firm since
25 the beginning of the case. But at the end of the day, we do

1 see a statute of limitations defense to this claim. Mr. Rodd
2 argues that ESIS, which is a claims company managed by General
3 Motors, had an open claim. We don't have access to ESIS'
4 records but when the open claims were delivered to General
5 Motors Corporation at the time of the filing, there was no
6 record of Mr. Rodd's claim.

7 Regardless of that issue, the statute of limitations
8 clearly requires the commencement of a legal action in order to
9 perfect that claim. And as a result, we always try to provide
10 something to claimants even if it's just a proxy for the amount
11 that it would cost the estate to prosecute an objection.
12 That's what we did in this case. Mr. Rodd approved it and then
13 disavowed the settlement. We have no intention of being viewed
14 as bullying any individual and that's why we have not sought to
15 enforce the settlement at this time.

16 In terms of the discovery that's been requested, that
17 discovery doesn't really go to the issue of the statute of
18 limitations defense or the issue of whether Mr. Rodd is
19 entitled to mediation. We've evaluated all of the cases to
20 decide whether mediation was an appropriate course. It is, of
21 course, at the discretion of the debtors to designate a claim
22 for mediation. As a practical matter, we have not designated
23 any claims under a million dollars simply because the cost
24 didn't justify it certainly at this time. And as a result,
25 this claim, especially given what our parameters were for

1 settlement, didn't make sense to burden Mr. Rodd with the costs
2 of conducting a mediation in Dallas which would be the nearest
3 mediation center to his home in Florida.

4 THE COURT: Okay. Mr. Rodd, do you wish to reply?

5 MR. RODD: Yes, Your Honor. My claim was initially
6 started April 6th, 2006. It was sent to Lisa Cudsworth, the
7 claims admin of ESIS in Detroit, Michigan. The file number was
8 49287. Mr. Smolinsky said he has no record of my claim. Well,
9 the record is contained in GM's ESIS file on myself. And I
10 was -- thought that Mr. Smolinsky would be made privy to ESIS'
11 insurance claim.

12 Also, Mr. Smolinsky hired a Jeremy Sloan, a Ms. Hill
13 in 2010, who also investigated my claim. And he referenced the
14 claim number with GM. So I was interpreting -- I was thinking
15 that the attorney that he hired might have reviewed the case
16 file because he has the case file number and he was asking me
17 questions relative to the claim. So I assume that, like I
18 said, the attorney he hired basically (indiscernible).

19 Hello?

20 THE COURT: Yes. I'm just listening.

21 MR. RODD: Of course this phone has a static in here,
22 Your Honor. I'm sorry.

23 THE COURT: No --

24 MR. RODD: And so, when speaking with Mr. Sloan, Mr.
25 Sloan stated that he -- that GM was prepared to give me stock

1 in exchange in lieu of my injuries, right? And that fund thing
2 was set up with Wilmington Trust. And upon contacting
3 Wilmington Trust, it said that a 500,000 dollar payment was
4 established for myself and it was uncontested by the lawyers.
5 It was awaiting the lawyers to take it to relief. When I
6 contacted Mr. Smolinsky about the issue, he said that they were
7 still in the process and that they would get back with me.
8 Well, some of it is a contradiction to what's being said.

9 Also, Mr. Smolinsky --

10 THE COURT: Pause, Mr. Rodd.

11 MR. RODD: -- never --

12 THE COURT: Mr. Rodd, pause for a minute, please. You
13 said Wilmington Trust told you your claim had been allowed in
14 the amount of 500,000 dollars?

15 MR. RODD: Correct, sir, and it was awaiting payment.

16 THE COURT: What did you understand Wilmington Trust's
17 role in this to be?

18 MR. RODD: Wilmington Trust's role was a depository
19 where GM had put the funds for everyone to be paid in the case,
20 right? Like, say, for instance, they had put thirty-seven
21 million or something to that effect for all the claimants in
22 the case, the bankruptcy case, to be paid. So therefore,
23 that -- I contacted them.

24 THE COURT: Go on.

25 MR. RODD: And that was giving me the impression that,

1 okay, this was going forward with the original claim amount.
2 And also, I never received anything stating that my cap letter
3 has been rejected. So I was then given an impression still
4 that the case was going forward with the original amount.
5 There was no impression given that a time limit had expired for
6 me filing a claim, filing a legal claim, because we were
7 ongoing with the bankruptcy process as well as the insurance
8 process. So two years into the bankruptcy process, it's been
9 said that the claim -- the time of the claim has lapsed to file
10 a legal course. Well, if I'm in the bankruptcy proceeding,
11 right, I'm assuming that that is a legal action. And if I had
12 filed -- and also, Motors Liquidation notified me in
13 approximately October of 2009 to file a claim with the
14 bankruptcy court because I had an outstanding claim against GM.
15 In fact, the file number on that is GPS0558973365. This form
16 is also contained in the Court records there.

17 So in doing these things, I assumed by my function was
18 that my claim was valid. And that's the premise that I've been
19 working under.

20 THE COURT: Okay. All right. Everybody, sit in place
21 for a second. Okay. Mr. Rodd, your motion insofar as you are
22 asking for my approval for authority to withdraw your motion
23 for reconsideration or rehearing of offer is granted and the
24 remainder of your motion is denied.

25 MR. RODD: Actually, Your Honor --

1 THE COURT: Forgive me. I'm going to put a full
2 ruling on the record and then I'll allow you to be heard
3 although you have to understand that once I rule, your remedy
4 is on appeal after the order is entered rather than --

5 MR. RODD: But --

6 THE COURT: -- arguing or negotiating with me after
7 I've ruled.

8 MR. RODD: But, Your Honor, what it is is the new
9 motion that I had filed for enforcement, it was supposed to be
10 a replacement to the reconsideration order.

11 THE COURT: Okay. All right. In any event, I'm now
12 ruling on the new motion. But, forgive me, Mr. Rodd. You
13 can't interrupt me a third time. Okay?

14 MR. RODD: Oh, yes. Yes.

15 THE COURT: All right. Your newest motion has two
16 main components. The first is to enforce the order
17 implementing the alternate dispute procedures. And the second
18 is to subpoena three named individuals one of whom is an
19 attorney at the Weil Gotshal firm and one of whom is the former
20 chairman and CEO of General Motors.

21 With respect to the mediation order, mediation is a
22 voluntary process. And its purpose is to help people save
23 litigation costs. As a voluntary process, and under my order,
24 neither side has the right to force the other to mediate if the
25 other doesn't want to subject to certain exceptions that aren't

1 applicable here. Under the facts that we have here, GM can't
2 force you to mediate and you can't force GM to mediate.
3 Moreover, it wouldn't be in either side's interest because
4 there is a basic legal issue which I'll speak to in a moment
5 under which if GM wants to fight you on this, you will get
6 nothing. And therefore, there's nothing to mediate and GM
7 would be entitled to that threshold ruling of law.

8 Notwithstanding that, GM has offered to give you an
9 allowed claim for 5,000 dollars even though you're entitled to
10 nothing because of the costs of dealing with the matter. Now
11 I'm going to come back to the statute of limitations in a
12 moment. But the fact is that if you wanted to mediate and if
13 GM were willing to mediate, you then have to each pick up half
14 the costs. You'd have to go to a distant location. And it
15 would cost you more to go through the mediation than you could
16 get on a distribution on a 5,000 dollar claim especially since
17 the 5,000 dollars isn't cash but it's in the form of General
18 Motors securities.

19 Now let me get to the legal principle which GM
20 addressed in its brief and which you haven't further addressed.
21 The statute of limitations is a rule of law that says if you
22 don't bring a court action in a timely way, your claim can't be
23 considered by the Court or allowed by the Court even if it
24 otherwise has merit. I don't know whether or not it has merit
25 but to stop the statute of limitations from running, you have

1 to bring a lawsuit, not just notify your defendant, within the
2 period of time that's set forth under the state's law.

3 The statute of limitations for bringing claims of the
4 type you're talking about in New York is three years. And in
5 Florida, it's four years. But even if you took the longer
6 Florida period, your claim would be barred, that is,
7 prohibited, under the statute of limitations.

8 Now for all of those reasons, you don't have the right
9 to the mediation that you're asking for and I have to deny that
10 part of your motion. I also have to deny the part of the
11 motion that orders me to subpoena the three individuals because
12 the issues that are before me don't require any witnesses. And
13 in addition, one of the three people who you want to subpoena
14 is outside of the subpoena power of the Court and I couldn't do
15 it even if I wanted to.

16 So your motion is going to be and is denied by my
17 decision but it will effectively be denied when an order is
18 entered. And, Mr. Smolinsky, I'm telling you to settle an
19 order. Settling an order isn't like settling a case. Settling
20 an order is to submit a proposed order to me for consideration
21 and you will have -- and, Mr. Smolinsky, you're going to give
22 Mr. Rodd a little more time. Give him a week to object to the
23 form of the order. So I'm clear, Mr. Rodd, when you object to
24 the form of the order, that doesn't deal with whether or not
25 you have a right to appeal. The only issue then before me is

1 what form of order best sets forth my ruling and is consistent
2 with my ruling. And the time to appeal from the decision will
3 run from the time of the entry of the order and not from the
4 time that I'm issuing this ruling today.

5 MR. RODD: Yes.

6 THE COURT: Now --

7 MR. RODD: May I address Your Honor?

8 THE COURT: You will in just a moment. I'll let you
9 in just a moment.

10 The matter of the allowability of your claim is not,
11 strictly speaking, before me today. But the issues have now
12 all been laid out. Mr. Rodd, I can't give you legal advice.

13 MR. RODD: Yes.

14 THE COURT: But I would strongly, strongly, strongly
15 encourage you to take the 5,000 dollar claim even --

16 MR. RODD: I will, Your Honor.

17 THE COURT: Okay, because otherwise, you're not going
18 to get anything. Now I'll hear you --

19 MR. RODD: I will, Your Honor.

20 THE COURT: -- Mr. Rodd. Okay. I said I'd give you a
21 chance to speak more if you wished, Mr. Rodd. I want to give
22 you that opportunity now.

23 MR. RODD: Okay, Your Honor. I think you've been fair
24 and generous with me. And you afforded me the opportunity and
25 I appreciate your diligence, sir. But at this time, I would

1 accept the offer that's before me for the 5,000 dollars. I'll
2 do that, sir.

3 THE COURT: Okay.

4 MR. RODD: And we can close out this issue.

5 THE COURT: Very well. Mr. Smolinsky, I assume you
6 can have one of your guys take care of that?

7 MR. SMOLINSKY: Yes. I will send Mr. Rodd another
8 copy of the settlement agreement along with the order.

9 MR. RODD: One question, Your Honor.

10 THE COURT: Yes, sir.

11 MR. RODD: Okay. I would that this be an expeditious
12 payment. Can we close this out quickly?

13 THE COURT: I don't know. Do you, Mr. Smolinsky?

14 MR. SMOLINSKY: I do know that this quarterly
15 distribution was just closed out about a week ago. And the
16 next distribution would be in three months. I could see what I
17 can do but I know that they go through a very lengthy process
18 in order to close out the records and do the math --

19 MR. RODD: And one other thing --

20 MR. SMOLINSKY: -- on all the distributions.

21 MR. RODD: One other thing, Your Honor.

22 THE COURT: Yes.

23 MR. RODD: As you noticed, the stock market is highly
24 vulnerable at this time. Say, for instance, if we agree to a
25 5,000 dollar settlement by today, the stock itself could drop

1 maybe ten dollars within a week, hypothetically speaking.

2 Would that be considered into the 5,000 dollar payment?

3 THE COURT: Unfortunately, no, Mr. Rodd, because,
4 first of all, of course, the stock market goes up, it goes down
5 and nobody knows which way it goes. But I ruled on this in my
6 written opinion on confirmation I don't know how many months
7 ago it was where I had to deal with this exact issue for other
8 claimants. And --

9 MR. RODD: But I --

10 THE COURT: -- you can't do that because it's not fair
11 to other creditors. And everybody --

12 MR. RODD: Right.

13 THE COURT: -- gets the same amount of stock for per
14 dollar of claim. And that's the only fair way it can be done
15 and that's the way I ruled in that written opinion. If you
16 wish, I'm sure one of Mr. Smolinsky's associates or legal
17 assistants can give you a citation to that decision where I
18 dealt with that issue. But I --

19 MR. RODD: Oh.

20 THE COURT: -- have ruled on that issue in the past.

21 MR. RODD: Yes, sir. You're very clear and concise
22 and I understand, sir. Again, thank you for your diligence and
23 I won't hold the Court up anymore.

24 THE COURT: Very well. Merry Christmas.

25 MR. RODD: Merry Christmas to you and your family as

1 well, sir.

2 THE COURT: Thank you.

3 MR. RODD: Thank you. Have a good idea.

4 THE COURT: Okay. Very well. Mr. Rodd, you're free
5 to either stay on the line or drop off as you prefer.

6 MR. RODD: Thank you. Thank you very much, Your
7 Honor.

8 THE COURT: Okay. Have a good day.

9 MR. RODD: Bye-bye.

10 THE COURT: Mr. Smolinsky, I think I heard you say you
11 had a couple of other minor matters to deal with.

12 MR. SMOLINSKY: Yes. Thank you, sir. There are two
13 omnibus matters on today. The first is the 262nd omnibus
14 objection to claims. Those are claims of pension benefits of
15 former salaried and hourly employees. There was one response
16 which we'll deal with at the next hearing. That's of Sheila
17 Marie Whorley. And other than that, we'd ask that the
18 objection be approved.

19 THE COURT: You got it.

20 MR. SMOLINSKY: Then we have the 263rd omnibus
21 objections. That's the same relief, welfare benefit claims of
22 retired and formerly salaried and executive employees. There
23 have been no responses and we'd ask that that relief be
24 approved.

25 THE COURT: Granted.

1 MR. SMOLINSKY: Just as a housekeeping matter, Your
2 Honor, and to advise the Court, consistent with the plan,
3 Motors Liquidation Company was dissolved on December 15th. So
4 Motors Liquidation Company no longer exists. The obligations
5 to resolve ongoing secured administrative and priority claims
6 will now be dealt with by the Motors Liquidation Company GUC
7 trust.

8 THE COURT: And the lawyering for the GUC trust will
9 be shared between you and counsel for the former creditors'
10 committee?

11 MR. SMOLINSKY: That's correct, Your Honor.
12 Additionally, Gibson Dunn has done work for the trust as well
13 in the nature of securities issues as well as some of the
14 distribution issues.

15 THE COURT: And I assume the Chapter 11 case just
16 continues under the name of Motors Liquidation Company with
17 real party in interest now being the GUC trust or one of the
18 other trusts that was formed.

19 MR. SMOLINSKY: That's correct, Your Honor.

20 THE COURT: Okay. Okay. Anything else?

21 MR. SMOLINSKY: That's it.

22 THE COURT: Okay. Have a good holiday. We're
23 adjourned.

24 MR. SMOLINSKY: You, too, sir.

25 (Whereupon these proceedings were concluded at 10:16 a.m.)

I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Bar-
Leib

Digitally signed by Lisa Bar-Leib
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LISA BAR-LEIB

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Date: December 21, 2011